

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of :

Appl. No.10/625,149

:

Confirm. No. 8274

H. Downman McCarty, II

:

Brooke Schumm III

Peter Popper, Applicants

:

Examiner: O. Flores Sanchez

Filed: July 23, 2003

:

Group Art Unit 3724

**For: AN ANTI-SPALLING COMBINATION ON AN IMPACT TOOL  
WITH AN IMPROVED HOLDING SYSTEM**

**DECLARATION OF H. DOWNMAN McCARTY, II**

My name is H. Downman McCarty, II. I am over the age of 18 and competent to testify. I am the President and Chief Operating Officer of Baltimore Tool Works, Inc. and I submit this declaration in support of the allowance of "An Anti-Spalling combination on an Impact Tool with an Improved Holding System now pending as Serial No. 10/625,149 in the United States Patent and Trademark Office.

My company started selling the invention of the Hard Hat chisel in June, 2004. I have been the President of Baltimore Tool Works, Inc. for almost 30 years and worked in the business for my father for almost 20 years before that. I hold a Bachelor of Arts from Johns Hopkins University that I received in 1968. I am familiar with and have been selling hand tools in the United States and overseas and participate in the international market for hand tools. I have sold products at Lowe's, Home Depot and to Ace Hardware outlets and am intimately familiar with market conditions in the United States. I attend sales shows and exhibits at least once per year and stay current on literature in the hand and power tool industries. I am a co-inventor of the invention for which application No. 10/625,149 has been filed. I have been interested in tool ergonomics for many years to try to establish a sales edge and niche for my company. I had tried

many polymer materials as caps and failed, thinking that a polymer cap would reduce vibration and noise. I was not able to achieve market penetration because the efficiency and effectiveness of the tool was so much reduced that nobody wanted to use it and so no distributors would stock it. This inability to find a suitable cap to improve ergonomics has been a problem for many years.

In summer, 2008, an apparent competitor to the Hard Hat™ chisel that I invented had been introduced to the U.S. market. I ordered a set of that competitor's GRIP ( an acronym, I believe, for Grand Rapid Industrial Products) tools and immediately determined that the cap was of inferior quality though the tool was an attempt to copycat my company's tool. I did this by having one of my employees test the GRIP tool by attempting to use it to cut ¼ inch drill rod, a fairly standard test which the Hard Hat chisel does very well. The GRIP tool and its cap failed on the second hit, and did not cut the rod.

Home Depot and other major retail distributors in the United States have been steadily contracting their product lines for a number of years. In order to reduce overhead, and in some instances for pricing leverage, the retail chains have been trying to reduce the number of vendors, the number of products carried, and of course to pay somewhat less to their source for the product if possible. Despite that contraction of lines of merchandise at Home Depot, since introducing my invention into the market, my sales receipts from August of 2004 through December of 2006 of Hard Cap tool sales with the chisel and the cap design of the invention to Home Depot averaged about \$40,000 per month. As the U.S. economy has deteriorated, the pressure to reduce products (sometimes referred to as reducing SKU's- a product Identification code), has increased. In 2007, Home Depot reduced their program of products being purchased from my company by two items, and our product was discontinued by NAPA. That revision of


product line by Home Depot resulted in a monthly average of slightly more than \$30,000 per month. In 2008 this average dropped slightly due to the economic decline. The monthly sales currently average about \$27,500. Since the Hard Cap product was introduced our total sales have been \$1,925,160. Because of its success in the market, and highly rated review by users, we continue to roll out new Hard Cap designs such as nail sets, which were introduced this last fall into Astra Ltd, of Hatfield, Hertfordshire. England, an English tool supply company, and to industrial suppliers in the U.S. including the Do-It Best cooperative chain. So, despite the economic hard times and the efforts by my customers to reduce their lines, my company and the Hard Cap invention have managed to maintain its market position and maintain its sales levels.

My tool was extensively tested as a new product by a leading magazine that markets to do-it-yourself types and professionals. It received strong reviews. Further, on linking to the website, well after I had discovered the competitive GRIP tool, on the website of a major tool distributor, Northern Tool Company, the attached review by a person unrelated to me, my company or the University of Delaware who rated the GRIP tool as junk and recommended the other domestic tool, which is the tool my company markets. (See Exhibit). Thus, merely selecting a polymer cap, as my experience had shown and my test has shown with the GRIP tool, failed to result in a practical tool with any improvement at all.

I hereby declare that all statements herein of my own knowledge are true and that all statement made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Section 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date 27 March 2009

Signature /s//H. Downman McCarty II/  
H. Downman McCarty, II

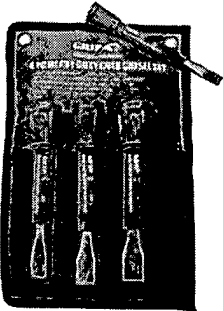

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Didn't hold up for 5 minutes, December 9, 2008  
By MrChips from East Coast [\(read all my reviews\)](#)

"Tried this imported product, since it was a good bit cheaper than the ones that are made in the USA.

I used it fo less than 5 minutes before the cap simply broke apart. I have used another brand of this style chisel in the past and have had no problems, but this brand simply did not hold up at all.

i would not recommend this product at all, spend the extra and buy the domestic brand."

What is your level of technical expertise?: Professional

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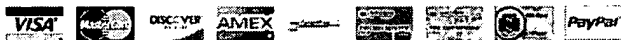
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